

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER C: ELECTRIC UTILITIES

PART 412
OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS

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SUBPART A: GENERAL

Section 412.10 Definitions

“Act” means the Public Utilities Act [220 ILCS 5].

“Alternative retail electric supplier” or “ARES” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

“Commission” means the Illinois Commerce Commission.

“Complaint” means an objection made to an entity, by a customer or another entity, as to its charges, facilities or service, the disposal of which complaint requires investigation or analysis.

“Customer” means the same as “Retail Customer” as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

“Electric utility” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

“Retail electric supplier” or “RES” includes both alternative retail electric suppliers and electric utilities serving or seeking to serve retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

“Sales agent” means a person engaged in selling power and energy service in Illinois, whether directly employed by the RES or otherwise exclusively selling the RES’s service.

"Small commercial customer" means those nonresidential customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area. A RES may remove the customer from designation as a "small commercial customer" if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer has consumed 15,000 kilowatt-hours of electricity or less during the previous year, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as a small commercial customer as that term is defined herein. Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

Section 412.20 Waiver

The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any subsections contained in this Part, in individual cases where the Commission finds that: (a) the provision from which the waiver is granted is not statutorily mandated; (b) no party will be injured by the granting of the waiver; and (c) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome. The burden of proof in establishing a right to waiver shall be on the party seeking the waiver.

SUBPART B: MARKETING PRACTICES

Section 412.100 Application of Subpart B

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 412.160 a), b) and c) and 412.170 shall apply to retail electric suppliers serving or seeking to serve any customer class.

Section 412.110 In-Person Marketing

- a) Sales agents who engage in door-to-door marketing for the purpose of selling power and energy service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:
 - 1) The sales agent's full name in reasonable size type face;
 - 2) A photograph of the sales agent;
 - 3) The trade name and logo of the RES they are representing. . If the sales agent is a licensed ABC per Part 454, the sales agent's identification shall have the trade name and logo of the company of which they are employed. (ABCs can represent several RES')
- b) The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.
- c) If a customer elects to enroll with the RES, the RES shall ensure items (d) – (o) of the uniform disclosure requirements in Section 412.330 are orally disclosed to the customer.
- e) If a customer's enrollment is authorized by the customer signing a

Comment [arm1]: d) is already contained in Section 412.330 and repeating it here in the rule is redundant.

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Deleted: If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent shall explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service. ¶

Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be part of the first page of the sales contract, included in the Letter of Authorization, or a separate document. The minimum list of items to be included in the disclosure statement is contained in Section 412.330.

- f) If a customer's enrollment is authorized by third-party verification during in-person marketing, the third-party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer.
- g) If the customer's enrollment is authorized on-line, the requirements of Section 412.150 shall apply.
- h) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent in English or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales representative for the RES who is fluent in the customer's language to continue the marketing activity in his/her stead, use an ~~interpreter~~, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed.
- i) The sales agent shall add the person's name to the RES's Do Not Market List upon that person's request.

Section 412.120 Telemarketing

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS

Comment [arm2]: To allow the use of Language Line as discussed at the last workshop

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413], RES sales agents who contact customers by telephone for the purpose of selling power and energy service shall provide the legal name of the RES, the sales agent's name and, on request, the identification number if available;

- b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, and the customer or another third party informs the RES sales agent of this circumstance, the sales agent must transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.
- c) If a customer elects to enroll with the RES, the RES sales agent must ensure items (d) – (o) of the uniform disclosure requirements are orally disclosed to the customer.
- ~~e)~~ When third-party verification is used to authorize a customer's enrollment during the telemarketing call, the third-party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.
- f) The written disclosure statement and sales contract must be provided to the customer within three business days of the electric utility confirmation of an accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.
- g) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 412.150 shall apply.
- h) The sales agent shall add the customer's name to the RES's Do Not Market List upon that person's request.

Comment [arm3]: d) is already contained in Section 412.330 and repeating it here in the rule is redundant.

Deleted: d) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent must explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service. ¶

In the event a customer initiates a call to a RES in order to enroll for service, the RES must:

- a) Follow the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]
- b) Orally disclose to the customer items (d) – (o) of the uniform disclosure requirements in Section 412.330.
- c) Require the customer to verbally acknowledge that he or she understands the items contained in the uniform disclosure statement.
- d) Send the written disclosure statement and sales contract to the customer within 3 business days of the electric utility confirmation of an accepted enrollment.

Section 412.140 Direct Mail

- a) A RES that contacts customers for enrollment for power and energy service by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.
- b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 412.330. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and that is not required to be mailed back to the RES.
- c) If a written Letter of Authorization is being used to authorize a customer's enrollment, it shall contain a statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.

MidAmerican prefers this original language.

- d) If a customer initiates a call to the RES for enrollment as a result of a direct mail solicitation, the RES must comply with Section 412.130.

Deleted: *If parties believe that the proposed requirement contained in c) cannot be combined with the Letter of Authorization, Staff offers the following alternative:¶*
If a written Letter of Authorization is being used to authorize a customer's enrollment, the RES shall require the customer to return a signed statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.¶

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- e) If a customer elects to enroll on-line as a result of a direct mail solicitation, the requirements of Section 412.150 shall apply.

Section 412.150 Online Marketing

- a) Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered without requiring the consumer to enter any personal information other than zip code, electric utility service territory, and/or type of service being sought (residential or commercial).
- b) The Uniform Disclosure Statement must be printable in a PDF format not to exceed two pages in length, and shall be available for downloading by the customer.
- c) The RES shall obtain, in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below, an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.
- d) The RES shall require the following customer information in an electronic authorization form:
 - 1) The customer's name;
 - 2) Confirmation that the person completing the form wants to make the supplier change;
 - 3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
 - 4) The service address affected by the supplier switch;
 - 5) The electric utility account number;

- 6) The billing address if different from service address; and
 - 7) The customer's electronic mail address.
- e) The Internet enrollment website of the RES shall, at a minimum, include:
- 1) All items within the Uniform Disclosure Statement. The minimum list of items to be included in the Uniform Disclosure Statement is contained in Section 412.330;
 - 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
 - 3) A statement that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;
 - 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;
 - 5) An e-mail address where the customer can express his or her decision to rescind the sales contract.

Section 412.160 Training of sales agents

- a) All sales agents shall be knowledgeable with the RES's products and services offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to, including the requirements contained in this code part and other relevant requirements contained in the Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Codes that pertain to the marketing and sales of electric supply service.
- b) All sales agents should be familiar with the RES's products and services

that they sell, including the rates, applicable termination fees if any, **billing** options, and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

- c) A RES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.
- d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's Do Not Market List, which the electric utility shall make available at least monthly on the 15th calendar day of the month. If the 15th calendar day is a non-business day, the electric utility shall make the list available on the next business day following the 15th calendar day of that month. The Do Not Market List maintained by the electric utility shall contain the customer's name, address, and phone number(s). RESs shall use the most current version of the Do Not Market List available; however, in assessing compliance with this section, 31 days will be afforded to RESs to account for the time required by the RES to disseminate and process the list internally.

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Comment [arm4]: Please clarify that this means options the customer has to pay the RES, or how the customer will pay his/her bill. Perhaps the wording should be "If the RES plans to bill the customer under the utility's UCB/POR tariffs, the RES sales agent must explain this billing option to the customer." No where in these rules are billing options (more so than "payment options") discussed with customers, who need to be aware that they may still receive a bill from their utility company, not the RES, and still be expected to pay their utility company.

Section 412.170 Records Retention and Availability

- a) A RES must retain, for a minimum of two years or, for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business days after a request is made by the Commission or Commission Staff.
- b) Throughout the duration of the contract, and for two years thereafter, the

RES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC
RENEWAL OF CONTRACT

Section 412.200 Application of Subpart C

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

Section 412.210 ~~Sales contract~~ rescission notifications

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's acceptance of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES. In the event the customer provides notice of such rescission to the RES, the RES shall notify the electric utility.

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Section 412.220 Deposits

A RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act.

Section 412.130 Early Termination Fee

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

Section 412.240 Contract Renewal

a) Non-Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least 45 days prior to the date of contract expiration but no more than 90 days in advance of expiration. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive

official documents by e-mail) that states, "Contract Expiration Notice;"

- 2) The month and year (or scheduled meter reading date) in which the existing contract will expire;
- 3) If the RES is offering a contract renewal, the disclosure of the terms and conditions of the renewal offer may be combined with the mailing of the contract expiration notice;
- 4) The RES must provide a full description of any renewal offers available to the customer, including the date service under the new term will begin;
- 5) Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

b) Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 30 days prior to the end of the initial contract term but no more than 90 days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the

Deleted: bill cycle

Comment [arm5]: . In MidAmerican's experience, percent off tariff/guaranteed savings products are the most popular product for this type of customer. Since the utility rate from year to year is not established at least 45 days out, this severely hampers a RES from renewing the customer on the same product they initially enrolled. The 30 day notification still gives the customer 20 days to enroll with another supplier. Keeping this notification at 30 days helps keep a popular product in the market.

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contract period. The separate written notice of contract renewal shall include:

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Renewal Notice;"
- 2) The date service under the new term will begin;
- 3) A statement in bold lettering no smaller than 12 point font that the contract will automatically renew unless the customer cancels it including the information needed to cancel;
- 4) If the new contract term includes a termination fee, a statement that the customer has from the date of the contract renewal notice through the end of the existing contract term to notify the RES of their rejection of the new contract term to avoid incurring a termination fee under the new contract term;
- 5) Clearly disclose the contract terms including a full description of any renewal offers available to the customer;
- 6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

Section 412.250 Assignment

If a RES is exiting the Illinois retail electric market, surrendering or otherwise cancelling its certificate of service authority, or no longer seeking to serve certain classes of customers, the RES shall not assign the agreement to a different RES unless:

- a) The new supplier is a RES,
- b) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service.
- c) The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- d) The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and
- e) Within thirty (30) days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section 412.300 Application of Subpart D

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

Section 412.310 Required RES Information

- a) The RES shall provide the following to the Commission's Consumer Services Division (CSD):
 - 1) A copy of its bill formats (if it bills customers directly rather than using electric utility consolidated billing);
 - 2) Standard customer contract;
 - 3) Customer complaint and resolution procedures;
 - 4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters.
- b) The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

Section 412.320 Dispute Resolution

a) Complaint Handling

- 1) A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

b) Complaints to RES

- 1) A customer or applicant for service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES does not respond to the customer's complaint in writing, the RES shall orally inform the customer of the ability to obtain the RES's response in writing upon request. A customer who is dissatisfied with the RES's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

c) Complaints to the Commission.

1) Informal complaints.

- A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Commission's CSD and provide contact information for the

Commission's CSD. Complaints may be filed with the Commission's CSD by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

i) The customer's name, billing and service addresses, and telephone number;

ii) The name of the RES;

iii) The utility name

iii) The customer account number;

iv) An explanation of the facts relevant to the complaint;

v) The complainant's requested resolution; and

vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

B) The Commission's CSD may resolve a complaint via phone by completing a call between the customer, the CSD staff and the supplier. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. Three-way calling may not be available or CSD staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the RES. In the case of the electric utility purchasing the RES's receivables, the RES shall notify the electric utility of any informal complaint received and the

electric utility shall cancel disputed RES charges and remove those charges from the customer's bill.

- C) The RES shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES.
- D) The Commission shall review the complaint information and the RES's response and notify the complainant of the results of the Commission's investigation.
- E) While an informal complaint process is pending:
 - 1) The RES (or the electric utility in the case of the electric utility having purchased the RES's receivables) shall not initiate collection activities for any disputed portion of the bill until the Commission has taken final action on the complaint.
 - 2) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of the electric utility purchasing the RES's receivables) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.
- F) The RES shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

2) Formal complaints.

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission.

3) Disclosure of RESs' level of customer complaints

The Commission shall, on at least a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its web site. The summary shall be in an easy-to-read and user friendly format.

Section 412.330 Uniform Disclosure Requirements

In addition to providing the customer with a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document must not exceed two pages in length and must include:

- a) The legal name of the RES;
- b) The RES's business address;
- c) The RES's toll free telephone number for billing questions, disputes, and complaints;
- d) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- e) The length of the agreement including the automatic renewal clause, if any;

- f) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- g) Any requirement to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;
- h) Any fees assessed by the RES to the applicant for switching to or from a RES;
- i) The name of the electric service offering for which the customer is being solicited;
- j) A statement that the customer may rescind the agreement within ten calendar days of the electric utility processing the enrollment request by calling either the RES or the electric utility and provide both phone numbers;
- k) A statement that the RES is an independent seller of power and energy service and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- l) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premises and will continue to respond to any service calls and emergencies;
- m) A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;
- n) If savings are guaranteed under certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and
- o) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not

Comment [arm6]: This statement protects the customer from a RES who could charge a close-out or termination fee (not necessarily an early termination fee) whenever a customer selected another supplier or to return to utility service, even after the initial contract has expired.

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include delivery service charges, the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.

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